

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MAURICE DAVIS, No. CIV S-04-0707-FCD-CMK

Plaintiff,

VS.

ORDER

STATE OF CALIFORNIA,

Defendant.

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil rights action pursuant to 42 U.S.C. § 1983. On July 18, 2005, defendant served and filed a motion to dismiss. On July 26, 2005, plaintiff filed with the court a document entitled “Objection to Defendant’s Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities.” While a proof of service showing that this document was mailed to the court was attached, the proof of service does not show that the July 26, 2005, document was served on defendant. On August 4, 2005, the court issued an order addressing the service problem, and directed plaintiff to mail a copy of the July 26, 2005, document to defendant and file proof of such service with the court within 15 days.

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1 On August 15, 2005, plaintiff responded to the court's August 4, 2005, order by
2 forwarding to the court a document purportedly showing that the July 26, 2005, document was in
3 fact served by mail on defendant. Plaintiff supplemented this response on August 30, 2005, by
4 forwarding additional documents showing service on defendant. Plaintiff's August 15, 2005,
5 response and August 30, 2005, supplemental response, however, do not appear to have been
6 served on defendant. Specifically, as with the July 26, 2005, document filed with the court, the
7 proofs of service attached to plaintiff's most recent filings show that the document was mailed
8 only to the court.

9 Plaintiff is once again reminded that every document submitted to the court for
10 consideration must also be served by mail on defendant. See Fed. R. Civ. P. 5. Thus, every
11 document submitted to the court must include a certificate of service stating the date an accurate
12 copy of the document was mailed to defendant. Plaintiff is advised that it is not necessary to
13 certify that the document was mailed to the court for filing. In this matter, the only name and
14 address that plaintiff must include on proofs of service are those for counsel for defendant.

15 Upon review of the record, the court cannot conclusively determine whether
16 plaintiff's July 26, 2005, document was properly served on defendant. In the event that defendant
17 was not served, and in the interest of justice, plaintiff will be required to re-serve the July 26,
18 2005, document on defendant.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff shall re-serve on defendant
20 his document entitled "Objection to Defendant's Notice of Motion and Motion to Dismiss;
21 Memorandum of Points and Authorities," originally filed on July 26, 2005, and file with the court
22 proof of such service within 15 days of the date of service of this order. Failure to comply with
23 this order may result in the imposition of sanctions, including dismissal of this case for lack of

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1 prosecution. See Local Rule 11-110.

2 DATED: September 21, 2005.

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4 CRAIG M. KELLISON
5 UNITED STATES MAGISTRATE JUDGE

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